

## Federal Acquisition Regulation

## 32.409-3

protect the Government's interest. Ordinarily, if the contract is a type described in 32.403(a) or (b), the contractor may limit the response to this subparagraph (6) to information on the contractor's reliability, technical ability, and accounting system and controls.

[48 FR 42328, Sept. 19, 1983, as amended at 66 FR 2138, Jan. 10, 2001]

### 32.409 Contracting officer action.

After analysis of the contractor's application and any appropriate investigation, the contracting officer shall recommend approval or disapproval and transmit the request and recommendation to the approving authority designated under 32.402(e).

#### 32.409-1 Recommendation for approval.

If recommending approval, the contracting officer shall transmit the following, under agency procedures, to the approving authority:

- (a) Contract data, including—
  - (1) Identification and date of the award;
  - (2) Citation of the appropriation;
  - (3) Type and dollar amount of the contract;
  - (4) Items to be supplied, schedule of deliveries or performance, and status of any deliveries or performance;
  - (5) The contract fee or profit contemplated; and
  - (6) A copy of the contract, if available.
- (b) The contractor's request and supporting information.
- (c) A report on the contractor's past performance, responsibility, technical ability, and plant capacity.
- (d) Comments on (1) the contractor's need for advance payments and (2) potential Government benefits from the contract performance.
- (e) Proposed advance payment contract terms, including proposed security requirements.
- (f) The findings, determination, and authorization (see 32.410).
- (g) The recommendation for approval of the advance payment request.
- (h) Justification of any proposal for waiver of interest charges (see 32.407).

#### 32.409-2 Recommendation for disapproval.

If recommending disapproval, the contracting officer shall, under agency procedures, transmit—

- (a) The items prescribed in 32.409-1(a), (b), and (c); and
- (b) The recommendation for disapproval and the reasons.

#### 32.409-3 Security, supervision, and covenants.

(a) If advance payments are approved, the contracting officer shall enter into an agreement with the contractor covering special accounts and suitable covenants protecting the Government's interest (see 32.411). This requirement generally applies under all statutory authorities, but modified requirements applicable to certain specific cases are prescribed in paragraphs (e) through (g) below.

(b) The agency shall (1) ensure that the amount of advance payments does not exceed the contractor's financial needs, and (2) closely supervise the contractor's withdrawal of funds from special accounts in which the advance payments are deposited.

(c) In the terms of the agreement, the contracting officer should provide for a paramount lien in favor of the Government. This lien may supplement or replace other security requirements. The lien should cover—

- (1) Supplies being acquired;
- (2) Any credit balance in the special account in which advance payments are deposited; and

(3) All property that the contractor acquires for performing the contract, except to the extent to which the Government otherwise has valid title to the property.

(d) Security requirements vary to fit the circumstances of different cases. Minimum security requirements are covered by the clauses prescribed in the contract. The contracting officer may supplement these as necessary in each case for protection of the Government's interest. Examples of additional security terms are—

- (1) Personal or corporate endorsements or guarantees;
- (2) Pledges of collateral;
- (3) Subordination or standby of other indebtedness;